No. 84-512

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

DeHAVILLAND AIRCRAFT OF CANADA, LTD.,

Petitioner,

vs.

CRISPIN MAUNDER and SAMUEL J. BETAR, Public Administrator of Cook County, Administrator of the Estate of RAGHUBIR DUTT LAW, Deceased,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTIONS PRESENTED FOR REVIEW

1) Does this Court's decision in *Cannon Mfg. Co. v. Cudahy Co.*, 267 U.S. 333 (1925)—holding that the forum state presence and activities of a wholly-owned subsidiary do not constitute the presence and activities of the parent for purposes of asserting *in personam* jurisdiction over the parent—still have "vitality"?

2) Regardless of the status of *Cannon*, did the Illinois Supreme Court's upholding of Illinois jurisdiction over the Canadian Petitioner, for a product made in Canada and an accident occurring in Africa having nothing to do with Illinois or with Petitioner's subsidiary in Illinois, violate Petitioner's constitutional rights under the due process clause of the Fourteenth Amendment of the United States Constitution?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW ..	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	2
JURISDICTION	2
APPLICABLE CONSTITUTIONAL PROVISION	3
STATEMENT OF THE CASE	3
Non-Illinois Accident Involving Non-Illinois Citizens	3
Litigation	4
Subsidiary Corporation Dismissed From Suits .	5
Service Of Process On Employee Of Subsidiary Only	5
Due Process—Jurisdictional Issue Raised By Motions To Dismiss	5
Facts Pertaining To Petitioner—DeHavilland Aircraft Of Canada, Ltd.	6
Facts Pertaining To Subsidiary Corporation—DeHavilland Canada, Inc. (Not A Party) ..	7
Illinois Circuit Court	8
Illinois Appellate Court	8
Illinois Supreme Court	9

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT:

I.

THE CONFLICT AMONG THE STATES AND CIRCUITS ON THE VITALITY OF THE *CANNON* DECISION SHOULD BE SETTLED BY THIS COURT 10

The Conflicting State And Federal Case Law Over The "Vitality" Of *Cannon* Demonstrates The Need For This Court's Review 12

II.

REGARDLESS OF THE STATUS OF *CANNON*, SUBJECTING PETITIONER CANADIAN CORPORATION TO ILLINOIS JURISDICTION FOR A CAUSE OF ACTION ARISING IN AFRICA AND HAVING NOTHING TO DO WITH ILLINOIS, CONFLICTS WITH PRIOR DECISIONS OF THIS COURT AND VIOLATES PETITIONER'S RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT . 15

Conflict With Prior Decisions Of This Court . 15

CONCLUSION 17

APPENDIX

Decision Of Illinois Supreme Court, Rendered On June 29, 1984 ..... App. 1

Decision Of Illinois Appellate Court, Rendered On February 16, 1983 ..... App. 14

Decision Of Illinois Circuit Court, Rendered On May 20, 1981 ..... App. 22

TABLE OF AUTHORITIES

Cases

ASC Industries, Inc. v. Keller Industries, Inc., 296 F. Supp. 1160 (D.C. Conn. 1969) 14
Boryk v. deHavilland Aircraft Co., 341 F.2d 666 (2d Cir. 1965) 13
Brunswick Corp. v. Suzuki Motor Co., Ltd., 575 F. Supp. 1412 (E.D. Wis. 1983) 14
Calder v. Jones, ... U.S. ....., 79 L. Ed. 804, 104 S. Ct. 1482 (1984) 15, 16
Cannon Mfg. Co. v. Cudahy Packing Co., 292 Fed. 169 (W.D. N.C. 1923) 10
Cannon Mfg. Co. v. Cudahy Co., 267 U.S. 333 (1925) ..... *passim*
Crow Tribe v. Mohasco Indus., 406 F. Supp. 738 (D. Mont. 1975) 12
DeWalker v. Pueblo International, Inc., 569 F.2d 1169 (1st Cir. 1978) 12, 13
Energy Reserves Group, Inc. v. Superior Oil Co., 460 F. Supp. 483 (D. Kan. 1978) 13, 14
Farkas v. Texas Instruments, Inc., 429 F.2d 849 (1st Cir. 1970) 12
Frito-Lay, Inc. v. Procter & Gamble Co., 364 F. Supp. 143 (W.D. Tex. 1973) 13
Harris v. Deere and Co., 223 F.2d 161 (4th Cir. 1955) 12
Helicopteros Nationales de Columbia v. Hall, ... U.S. ....., 80 L. Ed.2d 404, ... S. Ct. ..... (1984) . 15, 16
Hitt v. Nissan Motor Co., Ltd., 399 F. Supp. 838 (S.D. Fla. 1975) 13
International Shoe Co. v. Washington, 326 U.S. 310 (1945) 15

Keeton v. Hustler Magazine, ... U.S. ....., 79 L. Ed.2d 790, 104 S. Ct. 1473 (1984) 16
McPheron v. Penn Central Transp. Co., 390 F. Supp. 943 (D. Conn. 1975) 12
Shaffer v. Heitner, 433 U.S. 186 (1977) 15
Smith v. Piper Aircraft Corp., 425 F.2d 823 (5th Cir. 1970) 12
Wells Fargo & Co. v. Wells Fargo Exp. Co., 556 F.2d 406 (9th Cir. 1977) 13
Williams v. Canon, Inc., 432 F. Supp. 376 (C.D. Cal. 1977) 12
World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) 16

Constitutional Provisions and Statutes

U.S. Const. Amend. XIV 3
28 U.S.C. § 1257 2

IN THE

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OCTOBER TERM, 1984

DeHAVILLAND AIRCRAFT OF CANADA, LTD.,

Petitioner,

vs.

CRISPIN MAUNDER and SAMUEL J. BETAR, Public Administrator of Cook County, Administrator of the Estate of RAGHUBIR DUTT LAW, Deceased,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner, DeHavilland Aircraft of Canada, Ltd., a Canadian corporation, prays that a Writ of Certiorari issue to review the judgment and opinion of the Illinois Supreme Court. The Illinois Supreme Court reversed the Circuit Court of Cook County and held that the Illinois presence and activities of Petitioner's subsidiary enabled Illinois to properly assert *in personam* jurisdiction over Petitioner in a case where Petitioner manufactured an airplane in Canada that crashed in Africa giving rise to claims on behalf of citizens of India and Great Britian.

OPINIONS BELOW

The Opinion of the Illinois Supreme Court appears at 102 Ill.2d 342 and 466 N.E.2d 217 and 80 Ill. Dec. 765 (1984) and is printed in the Appendix hereto (App. 1-13). The Appellate Court opinion is reported at 112 Ill. App.3d 879, 445 N.E.2d 1303 (1983) and is also printed in the Appendix (App. 14-21). The Circuit Court's order granting Petitioner's Motion to Dismiss for lack of personal jurisdiction is not reported, but is also printed in the Appendix (App. 22-25).

JURISDICTION

The Opinion and judgment of the Illinois Supreme Court was entered on June 29, 1984. This Petition for Certiorari is timely filed within 90 days of that date, 28 U.S.C. §2101(c). The statutory provision granting jurisdiction to the Court is contained in 28 U.S.C. §1257 as follows:

> "§1257. State courts; appeal; certiorari
>
> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercises under, the United States."

APPLICABLE CONSTITUTIONAL PROVISION

The constitutional provision applicable to this case is contained in Section 1 of Amendment XIV of the United States Constitution as follows:

> "Constitution of the United States, Amendment XIV:
>
> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Non-Illinois Accident Involving Non-Illinois Citizens

These wrongful death and injury claims, brought on behalf of citizens of India and Great Britian, have no factual connection with Illinois whatsoever.

1) The accident occurred on May 3, 1976 in Zambia, Central Africa during a demonstration flight for the Zambian Air Force (R. C3).*

* All record references are to the Betar case unless otherwise noted.

2) The injured respondent, Crispin Maunder, is a British citizen who at the time of the occurrence was the commercial manager for Autair Helicopters Cafrical Limited of Luseka, Zambia (Maunder, R. C3).

3) The decedent, Raghubir Dutt Law, was a citizen of India and a member of the Zambian Air Force. (R. C3). His widow and children are all Indian nationals (R. C2).

4) The aircraft involved, a "Twin Otter", was manufactured by Petitioner DeHavilland Aircraft of Canada, Ltd. ("Ltd.") in Downsview, Ontario, Canada (R. C77, C180) and carried Canadian Registration No. C-6DWA (R. C77).

5) The plane was never in Illinois or even in the United States for any purpose at any time (R. C77).

6) The complaints alleged negligent operation of the plane in Zambia by Amos Pudsey, an alleged agent of DeHavilland Aircraft of Canada, Ltd., and defective design and/or manufacture of the plane by Ltd. in Canada (R. C4-C9).

Litigation

Canada

On May 6, 1977, Mr. Law's widow Urmela Law, a citizen of India and a resident of Zambia (R. C559), filed suit against DeHavilland Aircraft of Canada, Ltd. in the Supreme Court of Ontario, Canada (No. 12969) (R. C552-C560).

Illinois

On March 17, 1977, Crispin Maunder, a citizen of Britian residing in Africa, filed an action for personal injuries in the Circuit Court of Cook County (Cause No. 77 L

5215) (Maunder, R. C2-C8). On April 28, 1977, suit was also filed in the Circuit Court of Cook County by the Public Administrator of Cook County on behalf of the estate of Raghubir Dutt Law and his dependents, all of whom were Indian nationals (Cause No. 77 L 8087) (R. C2-C3).

Subsidiary Corporation Dismissed From Suits

In their attempt to obtain Illinois jurisdiction over De-Havilland of Canada, Ltd. for this accident having nothing to do with Illinois, respondents named as an additional defendant, DeHavilland Canada, Inc., a subsidiary of Petitioner and a Delaware corporation with its principal place of business in Rosemont, Illinois. However, the subsidiary company had nothing to do with the airplane involved in this occurrence and it was subsequently voluntarily dismissed from both suits (R. C55).

Service Of Process On Employee Of Subsidiary Only

No service of process in either case was ever obtained upon any officer or employee of Petitioner. Instead, the Circuit Court summons and complaint was left with Barbara Schuett, an office employee of the subsidiary corporation working in Rosemont. (Betar, R. C14, C265; Maunder, R. C25).

Due Process—Jurisdictional Issue Raised By Motions To Dismiss

Both the Maunder and Betar cases were originally removed to the Federal District Court for the Northern District of Illinois. The Maunder case was quickly re-

manded since the federal court lacked jurisdiction over a suit between aliens, i.e., a British subject and a Canadian corporation (Maunder, R. C43). The Betar case was originally dismissed by the federal district court for lack of personal jurisdiction over the Canadian defendant (R. C55-C63). On appeal, the Seventh Circuit Court of Appeals did not reach the basic jurisdictional issue. Rather, it held that the *Betar* case too should have been remanded since the Illinois Public Administrator had no "stake" in the action and thus the suit was also between aliens, i.e., citizens of India against a Canadian corporation. *Betar v. DeHavilland Aircraft of Canada, Ltd.*, 603 F.2d 30 (7th Cir. 1979), *cert. denied*, 444 U.S. 1098 (1980) (Betar, R. C44).

On remand to the Illinois Circuit Court, DeHavilland Aircraft of Canada, Ltd. renewed its motion to quash service of summons and to dismiss both cases for lack of personal jurisdiction (R. C52). Discovery was undertaken with respect to the jurisdictional issue and the parties were permitted to file affidavits, depositions and other documents in support of their positions.

Facts Pertaining To Petitioner—
DeHavilland Aircraft of Canada, Ltd.

Petitioner DeHavilland Aircraft of Canada, Ltd., is a Canadian corporation with its plant in Downsview, Ontario, Canada (R. C340, C346). Its corporate offices and principal place of business are in Ontario (R. C76). Petitioner has no offices, plants, factories or other place of business in Illinois (R. C76). It has no officers, directors or employees living, residing or stationed in the State of Illinois (R. C402). It is not qualified, authorized or otherwise licensed or entitled to do business in Illinois (R.

C403). It does not own, lease or use any real estate in the State of Illinois (R. C76, C401). It does not hold any licenses, charters, or permits granted or issued by the State of Illinois or by any Illinois agency or by any county or municipal government in Illinois (R. C76, C514). It pays no Illinois taxes and has no registered agent of any other authorized agent for receipt of process in Illinois (R. C402, C514).

Facts Pertaining To Subsidiary Corporation— DeHavilland Canada, Inc. (Not a Party)

DeHavilland Canada, Inc., a Delaware corporation with its principal place of business in Rosemont, Illinois, is a wholly-owned subsidiary of DeHavilland Aircraft of Canada, Ltd. (R. C105). The subsidiary's sole business is the sale of aircraft parts for DeHavilland airplanes (R. C204), C483). It purchases these parts both from Petitioner in arms-length transactions (R. C59) and from 80 other independent parts suppliers throughout the country (R. C251, C252, C439, C561-C564). The subsidiary has kept its separate corporate identity at all times. It has its own management, its own Chicago auditors, keeps its own corporate records, pays its own taxes and its own operating expenses, and funds its own separate pension plan for its own employees (R. C522, C524, C549, C553-C554).

The subsidiary maintains its own parts inventory and its own warehouse in Rosemont, Illinois from which it ships parts directly to its customers (R. C55). Purchase decisions and prices on parts purchased and resold by the subsidiary are set exclusively by the subsidiary's manager and director Mr. Jay Cox (R. C195-C236, C250-C251, C256, C260, C544-C548).

Illinois Circuit Court

The Circuit Court granted Petitioner's motion to dismiss with a written order providing in part as follows:

> "The instant litigation involves the crash in Africa of a plane manufactured in Canada causing the death of two residents of India. *It cannot be said that these facts are clearly "within the ambit of the state's legitimate protective policy".* The contacts with this state involve a separate subsidiary corporation which supplies parts for DeHavilland aircraft, however, *no activities of this subsidiary are in any way involved in the basic litigation.* There is no contention that the subsidiary supplied parts for the plane involved in the crash. There is some evidence that the parent exercised some control of the subsidiary both in starting up the business and with respect to the line of authority, however, *the evidence does not show that the subsidiary was a mere sham or alter ego.* Further, the subsidiary did not manufacture or sell aircraft.
>
> "*Analyzing the nature and quality of the contacts with the State of Illinois, this court cannot say that it would be fair and reasonable to require DeHavilland Aircraft, Ltd., a Canadian Corp., to defend this action in Illinois.*" (R. C703-C794) (Emphasis added.)

Illinois Appellate Court

On February 16, 1983, the Illinois Appellate Court reversed the Circuit Court's dismissal order and held that the Canadian defendant's contacts with its Illinois resident subsidiary were sufficient "minimum contacts" for general jurisdiction purposes (App. 19-20), thus subjecting Petitioner to Illinois jurisdiction for all causes of action arising everywhere and anywhere. *Maunder v. DeHavilland*

Aircraft of Canada, Ltd., 112 Ill. App.3d 879, 445 N.E.2d 1303 (1983).

Illinois Supreme Court

The Illinois Supreme Court affirmed the Appellate Court's reversal of the Circuit Court on the basis of the Illinois activities, not of Petitioner, but of its subsidiary ("Inc."): "*Inc. has been operating in Illinois* for 13 years and these operations have been continuous and systematic" (102 Ill.2d at 350), and Petitioner "*through Inc.*, was doing business in Illinois" (102 Ill.2d at 352) (emphasis added.)

Aware that its decision basing jurisdiction on the activities of Petitioner's subsidiary was contrary to this Court's holding in *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333 (1925), the Illinois Supreme Court disposed of *Cannon* by stating (102 Ill.2d at 353):

> "Although *Cannon* has not been expressly overruled, *its vitality has been limited* by the subsequent decisions in *International Shoe* and its progeny." (Emphasis added)

Petitioner, DeHavilland Aircraft of Canada, Ltd., now seeks this Court's review of the Illinois Supreme Court's decision. The determination of the continuing "vitality" of *Cannon* should be made by this Court, not the Illinois Supreme Court.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

I.

THE CONFLICT AMONG THE STATES AND CIRCUITS ON THE VITALITY OF THE *CANNON* DECISION SHOULD BE SETTLED BY THIS COURT.

While the Illinois Supreme Court stated that this Court's decision in *Cannon Mfg. Co. v. Cudahy Co.*, 267 U.S. 333 (1925) has "limited vitality" (102 U.S. at 353), the Illinois court interpreted *Cannon* in a way that leaves it with "no vitality".

In *Cannon*, this Court held that North Carolina could not assert jurisdiction over Cudahy, a Maine corporation not licensed to do business in North Carolina, even though Cudahy had a wholly-owned Alabama subsidiary (with many common officers and directors)* licensed and doing business in North Carolina as "the instrumentality employed to market Cudahy products within the State" (267 U.S. at 335). Moreover, in *Cannon* it was established that:

1) The subsidiary bought the parent's products and resold them to dealers in the state (267 U.S. at 335).

2) The products were shipped directly from the parent to the in-state dealers (267 U.S. at 335).

3) Through ownership of the capital stock or otherwise, the parent "dominated" the subsidiary corporation "immediately and completely;" (267 U.S. at 335)

4) The parent "exerts its control both commercially and financially in substantially the same way, and

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* See *Cannon Mfg. Co. v. Cudahy Packing Co.*, 292 Fed. 169, 172, 176 (W.D. N.C. 1923).

> mainly through the same individuals, as it does over those selling branches or departments of its business not separately incorporated which are established to market the Cudahy products in other states" (267 U.S. at 335);

Even with this evidence of "ownership," "control," and "domination" (not present in the case at bar), this Court held that the formal separateness maintained between the two corporations was sufficient to prevent the acts of the subsidiary from being considered the acts of the parent for purposes of personal jurisdiction. The Court reasoned (at 335-338):

> "*The existence of the Alabama Company as a distinct corporate entity is, however, in all respects observed. Its books are kept separate. All transactions between the two corporations are represented by appropriate entries in their respective books in the same way as if the two were wholly independent corporations* . . .
>
> * * *
>
> "The defendant wanted to have business transactions with persons resident in North Carolina, but for reasons satisfactory to itself did not choose to enter the State in its corporate capacity. It might have conducted such business through an independent agency without subjecting itself to the jurisdiction. *Bank of America v. Whitney Central National Bank*, 261 U.S. 171. *It preferred to employ a subsidiary corporation.*
>
> * * *
>
> "[W]hatever might be other legal consequences of the concentration, *we cannot say that for purposes of jurisdiction, the business of the Alabama corporation in North Carolina became the business of the defendant.*" (Emphasis added)

This Court has never overruled or "limited" *Cannon*'s holding that the presence and activities of a wholly-owned subsidiary are not attributable to the parent company "for purposes of jurisdiction" (*Cannon*, 267 U.S. at 338).

The Conflicting State And Federal Case Law Over The "Vitality" Of *Cannon* Demonstrates The Need For This Court's Review

In recent years, *Cannon* has been followed in numerous jurisdictions including the First, Fourth and Fifth Circuits:

1. *DeWalker v. Pueblo International, Inc.*, 569 F.2d 1169 (1st Cir. 1978) (activities of wholly-owned New York subsidiary not attributable to parent Delaware corporation);

2. *Farkas v. Texas Instruments, Inc.*, 429 F.2d 849 (1st Cir. 1970) (Massachusetts lacked jurisdiction over parent corporation whose subsidiary was doing business within the state);

3. *Harris v. Deere and Co.*, 223 F.2d 161 (4th Cir. 1955) (Illinois defendant corporation not chargeable with activities of wholly-owned North Carolina subsidiary corporation selling defendant's products);

4. *Smith v. Piper Aircraft Corp.*, 425 F.2d 823 (5th Cir. 1970) (Georgia activities of Florida distributor not attributable to Piper, a Pennsylvania corporation);

5. *Williams v. Canon, Inc.*, 432 F. Supp. 376 (C.D. Cal. 1977) (activities of wholly-owned U.S. subsidiary doing business in California not attributable to Japanese corporation);

6. *McPheron v. Penn Central Transp. Co.*, 390 F. Supp. 943 (D. Conn. 1975) (activities of Connecticut holding company not attributable to parent Pennsylvania corporation);

7. *Crow Tribe v. Mohasco Indus.*, 406 F. Supp. 738 (D. Mont. 1975) (Montana court lacked jurisdiction

over nonresident parent corporation where formal separation was maintained between it and its subsidiary doing business within the state);

8. *Frito-Lay, Inc. v. Procter & Gamble Co.*, 364 F. Supp. 243 (W.D. Tex. 1973) (Texas had no jurisdiction over Procter & Gamble Co., even though a wholly-owned subsidiary, with common officers and directors, Procter & Gamble Distrib. Co., did substantial business and sales of Gamble products in Texas).

Illustrative of the holdings in these cases is this adherence to *Cannon* in *DeWalker v. Pueblo International, Inc.*, *supra*, 569 F.2d at 1172:

> "In determining whether a parent is 'doing business' in a state for purposes of personal jurisdiction, the Supreme Court has held that *a separately incorporated subsidiary operating in a state ordinarily may not be considered to be the parent for purposes of determining whether the parent is doing business there* (citing *Cannon*)." (Emphasis added)

In contrast, the following courts, including the Second and Ninth Circuits, have expressly or impliedly rejected *Cannon*:

1. *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 423 (9th Cir. 1977) (activities and presence of Nevada subsidiary attributable to Liechtenstein corporation);

2. *Boryk v. deHavilland Aircraft Co.*, 341 F.2d 666 (2d Cir. 1965) (Delaware subsidiary's New York activities attributable to British parent);

3. *Energy Reserves Group, Inc. v. Superior Oil Co.*, 460 F. Supp. 483 (D. Kan. 1978) (parent corporation's Kansas activities attributable to British subsidiary);

4. *Hitt v. Nissan Motor Co., Ltd.*, 399 F. Supp. 838 (S.D. Fla. 1975) (activities of U.S. subsidiary attributable to Japanese parent);

5. *ASC Industries, Inc. v. Keller Industries, Inc.*, 296 F. Supp. 1160, 1163 (D.C. Conn. 1969) (activities of wholly-owned Connecticut subsidiary attributable to Florida parent);

6. *Brunswick Corp. v. Suzuki Motor Co., Ltd.*, 575 F. Supp. 1412 (E.D. Wis. 1983) (forum state activities of subsidiary attributed to Japanese parent in upholding Wisconsin jurisdiction over parent).

An example of the view of these cases is this statement in *Energy Reserves Group, Inc. v. Superior Oil Co.*, *supra*, 460 F. Supp. at 490:

> "The Court secondly holds that formal separation of corporate identities does not raise a constitutional barrier to the exercise of jurisdiction over a nonresident whose affiliated corporation has a substantial nexus with the forum. This follows from the conclusion that the time-honored doctrine of *Cannon Manufacturing Co. v. Cudahy Packing Co.*, 267 U.S. 333, 45 S.Ct. 250, 69 L.Ed. 634 (1925), *must no longer be followed.* The Court finds *Cannon* to be limited in scope or modified in holding by *International Shoe* and its progeny. *Reliance on the rule of Cannon is unsound* when extraterritorial service is authorized by statute and when personal jurisdiction is predicated on the due process standards of *International Shoe.*" (Emphasis added)

It is thus apparent that the status of the *Cannon* rule is an issue of national and international significance on which this Court's guidance is urgently needed, not only by Petitioner, but by all parent corporations and their subsidiaries. The issue is squarely presented by the facts of this case and should be resolved at this time for the benefit of state and federal courts everywhere.

II.

REGARDLESS OF THE STATUS OF *CANNON*, SUBJECTING PETITIONER CANADIAN CORPORATION TO ILLINOIS JURISDICTION FOR A CAUSE OF ACTION ARISING IN AFRICA AND HAVING NOTHING TO DO WITH ILLINOIS, CONFLICTS WITH PRIOR DECISIONS OF THIS COURT AND VIOLATES PETITIONER'S RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT.

The guiding constitutional principles applicable to the jurisdictional issue presented herein are embodied in the "minimum contacts" standard first announced by this Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and recently reiterated in *Calder v. Jones*, ... U.S. ....., 79 L. Ed. 804, 104 S. Ct. 1482 (1984), citing *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977) and stating:

> "In judging minimum contacts, a Court properly focuses on the relationship among the defendant, the forum and the litigation." (104 S. Ct. at 1486)

In the instant case, the litigation has no relationship at all with the Illinois forum or with any activities of the Petitioner or its subsidiary in Illinois. Upholding jurisdiction on the facts of this case, simply does not comport with any jurisdictional-due process formula ever announced by this Court. Moreover, the recent decisions of this Court relied upon by the Illinois Supreme Court are directly contrary to upholding Illinois jurisdiction over Petitioner in this case.

Conflict With Prior Decisions Of This Court

The Illinois Supreme Court cited this Court's decision in *Helicopteros Nationales de Columbia v. Hall*, ... U.S. ....., 80 L. Ed.2d 404, ... S. Ct. ..... (1984). But in *Hall*,

this Court held that Texas could *not* constitutionally assert *in personam* jurisdiction over a Columbian corporation for an accident which occurred in Peru, even though the foreign corporation did substantial business in Texas and that business had at least an indirect connection with the occurrence, i.e., the helicopter involved in the accident was one of many purchased in Texas by the Columbian defendant and the contract pursuant to which plaintiff's decedent was being transported at the time of the accident was negotiated by defendant in Texas (104 S. Ct. at 1870, 1874).

The instant case does not have even such tangential connections with Illinois. Nothing about this case has anything to do with Illinois or with any Illinois activity of Petitioner or its subsidiary.

The Illinois Supreme Court also cited *Calder v. Jones*, ... U.S. ....., 79 L. Ed.2d 804, 104 S. Ct. 1482 (1984) and *Keeton v. Hustler Magazine*, ... U.S. ....., 79 L. Ed.2d 790, 104 S. Ct. 1473 (1984). But in these libel cases, this Court upheld a finding of a long-arm jurisdiction over defendants since the libel *actually occurred and caused injury in the forum state.* (104 S. Ct. at 1478-1479, 1486-1487).

In the case at bar, no tort occurred in Illinois, no injury occurred there, and long-arm jurisdiction was not even asserted.

On the facts of this case, there is simply no basis on which Petitioner could or should have "reasonably anticipate[d] being haled into court" in Illinois, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980), and the due process clause "in its role as guarantor against inconvenient litigation" should serve to protect Petitioner from having to defend this case in Illinois (*Woodson*, 444 U.S. at 292).

If the Illinois Supreme Court's holding is correct, a foreign corporation may now be sued in the state where its subsidiary is located for each and every conceivable accident and event no matter where it occurs and no matter that it has absolutely no connection with the subsidiary or with any of the subsidiary's activities. Such an unprecedented result ignores the basic principles of jurisdictional due process, and certainly should not become the law of any state without this Court's review.

CONCLUSION

To decide the continued vitality of a landmark decision and thereby resolve the conflict and confusion among the states, circuits and districts on the parent/subsidiary jurisdictional issue and also to align the Illinois Supreme Court's decision in this case with the basic principles of jurisdictional due process, Petitioner DeHavilland Aircraft of Canada, Ltd. respectfully requests that a Writ of Certiorari issue to review the judgment and Opinion of the Illinois Supreme Court herein.

Respectfully submitted,

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APPENDIX

Decision Of Illinois Supreme Court
Rendered On June 29, 1984

(No. 58108.—Affirmed and remanded.)

CRISPIN MAUNDER, *Appellee, v.* DEHAVILLAND AIRCRAFT OF CANADA, LTD., *Appellant.*—SAMUEL J. BETAR, Adm'r, *Appellee, v.* DEHAVILLAND AIRCRAFT OF CANADA, LTD., *Appellant.*

JUSTICE CLARK delivered the opinion of the court:

This appeal requires us to determine whether the circuit court of Cook County has jurisdiction over DeHavilland Aircraft of Canada, Ltd., a foreign corporation. More specifically, we are asked to determine whether the defendant was doing business in Illinois in order to be amenable to service of process and subject to the laws of this State.

These consolidated actions to recover for personal injury and wrongful death are based on the crash of an airplane designed and manufactured by defendant, DeHavilland Aircraft of Canada, Ltd. (Ltd.). The airplane crash occurred on May 3, 1976, in Lusaka, Zambia, during a demonstration flight for the Zambian Air Force and caused the death of Raghubir Dutt Law, a citizen of India and a member of the Zambian Air Force. Mr. Law's widow and children are also Indian citizens. Plaintiff Crispin Maunder, an English citizen and a passenger in the aircraft, was injured in the same crash. In April 1977, Samual J. Betar, public administrator of Cook County, was appointed administrator of the estate of decedent Law by the probate division of the circuit court of Cook County. On April 28, 1977, Betar filed suit in the circuit

court of Cook County against Ltd. and DeHavilland Canada, Inc. (Inc.), a Delaware corporation with its principal office and principal place of business in Rosemont, Illinois. Inc. is a wholly owned subsidiary of Ltd. and sells and distributes parts for airplanes manufactured by Ltd.

On March 17, 1977, Crispin Maunder filed suit in the circuit court of Cook County against Inc. and Ltd. Service in the Law and Maunder suits was effectuated by leaving copies of the complaint and summons with an employee of Inc. in the Rosemont office.

On May 27, 1977, the defendants filed petitions to remove both causes to the United States District Court for the Northern District of Illinois. Inc. was voluntarily dismissed from both causes, leaving Ltd. as the sole defendant. A protracted procedural battle ensued in Federal court. Both causes were eventually remanded to the circuit court of Cook County because there was no diversity of citizenship between aliens Maunder (England), Law (India) and Ltd. (Canada). *Betar v. DeHavilland Aircraft of Canada, Ltd.* (7th Cir. 1979), 603 F.2d 30, *cert. denied* (1980), 444 U.S. 1098, 62 L. Ed. 2d 785, 100 S. Ct. 1064.

On May 20, 1981, the circuit court granted Ltd.'s motion to dismiss, noting:

> "Analyzing the nature and quality of the contacts with the State of Illinois, this court cannot say that it would be fair and reasonable to require DeHavilland Aircraft Ltd., a Canadian Corp., to defend this action in Illinois."

The appellate court reversed the circuit court's order and remanded the cause to the circuit court, ruling that Ltd.'s Illinois subsidiary, Inc., provided sufficient contacts to invoke the jurisdiction of Illinois courts. (112 Ill. App. 3d 879.) We granted defendant's petition for leave to ap-

peal. (87 Ill. 2d R. 315(a).) We now affirm the decision of the appellate court.

Ltd.'s corporate offices and principal place of business are in Downsview, Ontario. Ltd. has manufactured "Twin Otter" propeller-driven planes for many years, and these planes are used all over the world for short passenger flights. The record reveals that there were 885 DeHavilland Ltd. aircraft operating in the United States in 1982. In 1971, Ltd. established a subsidiary corporation, DeHavilland Canada, Inc., to facilitate Ltd.'s business operations in the United States. Inc. is a wholly owned subsidiary of Ltd., and all of Inc.'s stock is owned by Ltd. The salaries of Inc.'s directors are paid by Ltd., and Ltd. guaranteed Inc.'s lease in Rosemont. The record reveals that an average of eight telephone calls per day were made from Inc.'s office to the parent's office in Ontario. The subsidiary's sole business is the sale of aircraft parts for DeHavilland aircraft. The manual of Inc. provides the following descriptions of the relationship between Ltd. and Inc.:

> "DeHavilland Aircraft of Canada has incorporated a subsidiary company in the United States of America. The registered name and address of the Company is:
>
> DEHAVILLAND CANADA INC.
> 5321 North Pearl Street
> Rosemont Illinois 60018
>
> The Company is controlled by the Parent Company and will operate under the authority of the Vice President [of] Sales. The function of this Company is to provide Product Support to the American users of the Parent Company's products."

Ltd. has included Inc. in advertisements published in American aviation journals. One full-page advertisement contained the following claims:

"How to carry 3 million passengers an average of 42 miles each. And make it pay.

* * *

In the last 10 years, Golden West has flown over 168,400,000 passenger miles, making it the largest commuter airline in the U.S.A. Their 12 Twin Otters have made an astonishing 1,387,000 landings. * * *

* * * [D]e Havilland Twin Otter proves 99.9% reliable. Rugged airframe and simple systems keep maintenance to a minimum. Quiet turboprops with TBOs of over 8,000 hours conserve fuel, and reverse to shorten landings and extend brake life.

Golden West President James M. Harmon sums up his passengers' satisfaction with Twin Otter: 'They know they can depend on its comfort, convenience and on-time reliability.' And to short haul operators, that's pure gold.
The de Havilland Aircraft of Canada, Limited
Downsview, Ontario M3K 1Y5
Telephone: (416) 633-7310
Telex: 0622128. Cable: MOTHTOR, Toronto.

DE HAVILAND **Twin Otter**
The standard of dependability and versatility around the world.
Twin Otter service and spares support also available through de Havilland Canada Inc., 5321 North Pearl Street, Rosemont, Illinois 60018. Telephone (312) 678-8380. Telex 00726409."

In this appeal, we are only concerned with the issue of jurisdiction. The merits of this case have never been addressed in more than seven years of litigation. We begin our discussion of the jurisdictional arguments by noting that the plaintiffs do not contend that Illinois courts have jurisdiction based on the long-arm statute (Ill. Rev. Stat. 1981, ch. 110, par. 2-209). Rather, the plaintiffs contend

that Ltd.'s contacts with Illinois constituted "doing business" in Illinois, thus subjecting Ltd. to the personal jurisdiction of Illinois courts.

The United States Supreme Court has determined that a State's power to enter *in personam* judgments binding on nonresident defendants is limited by the due process clause of the fourteenth amendment (U.S. Const., amend. XIV) (due process guarantees made applicable to the States by the fourteenth amendment). Criteria for such determinations were delineated in *International Shoe Co. v. Washington* (1945), 326 U.S. 310, 90 L. Ed. 95, 66 S. Ct. 154. State courts may invoke personal jurisdiction over a nonresident defendant that has minimum contacts with the forum, so long as the suit does not offend " 'traditional notions of fair play and substantial justice.' " (326 U.S. 310, 316, 90 L. Ed. 95, 102, 66 S. Ct. 154, 158.) The court noted:

> "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. * * * [T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." 326 U.S. 310, 319, 90 L. Ed. 95, 104, 66 S. Ct. 154, 160.

Our review of subsequent United States Supreme Court cases supports our determination that Ltd. is subject to the jurisdiction of Illinois courts. In *Keeton v. Hustler*

Magazine (1984), ____ U.S. ____, 79 L. Ed. 2d 790, 104 S. Ct. 1473, a unanimous court ruled that New Hampshire could exercise *in personam* jurisdiction over a nonresident magazine publisher that had circulated his publication in New Hampshire. The court noted that New Hampshire was chosen as the forum State because New Hampshire's statute of limitations for libel provided a longer period of time than the statute of limitations of other States. Similarly, the court found no due process violation in *Calder v. Jones* (1984), ____ U.S. ____, 79 L. Ed. 2d 804, 104 S. Ct. 1482. In *Calder*, another unanimous court determined that a California court could exercise *in personam* jurisdiction over Florida journalists, even though the allegedly libelous article was written and published in Florida and the only contact with the forum State was the circulation of the article. Although these two cases deal with libel and not airplane crashes, we believe that the due process considerations in *Keeton* and *Calder* support our determination in the case at bar.

Business contacts must be of a continuous and systematic nature to invoke the jurisdiction of State courts. In *Helicopteros Nacionales de Columbia v. Hall* (1984), ____ U.S. ____, 80 L. Ed. 2d 404, 104 S. Ct. 1868, the United States Supreme Court held that a nonresident Columbian corporation was not subject to *in personam* jurisdiction of the State courts of Texas. Helicopteros (Helicol) had entered into a contract to provide helicopter transportation in Peru for the Peruvian State oil company. Four American citizens were killed in a helicopter crash in Peru, and suit was brought in a Texas court. The court held that Helicol's contacts with Texas were insufficient to satisfy the requirements of the due process clause of the fourteenth amendment. The court noted:

> "Helicol never has been authorized to do business in Texas and never has had an agent for the service of process within the State. It never has performed helicopter operations in Texas or sold any product that reached Texas, never solicited business in Texas, never signed any contract in Texas, never had any employee based there, and never recruited an employee in Texas. In addition, Helicol never has owned real or personal property in Texas and never has maintained an office or establishment there." ____ U.S. ____, ____, 80 L. Ed. 2d 404, 409, 104 S. Ct. 1868, 1871.

We contrast this with the business contacts between Ltd. and the State of Illinois. Ltd. established a wholly owned subsidiary in Illinois to provide product support for the users of Ltd.'s products. Inc. has been operating in Illinois for 13 years, and these operations have been continuous and systematic. Inc. has been included in Ltd.'s American advertising, and has been an essential component of Ltd.'s business activities in Illinois. We believe that the case at bar, unlike *Helicopteros*, presents a pattern of continuous and systematic business activities, and these contacts are sufficient to invoke the jurisdiction of Illinois courts.

In Illinois, jurisdiction over nonresident corporations doing business in the State is based on the following statutory provision:

> "A private corporation may be served (1) by leaving a copy of the process with its registered agent or any officer or agent of said corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law. A private corporation may also be notified by publication and mail in like manner and with like effect as individuals." Ill. Rev. Stat. 1981, ch. 110, par. 2-204.

A determination of whether a foreign corporation is doing business in the State of Illinois turns on the facts unique to each case. (*Cf. Cook Associates, Inc. v. Lexington United Corp.* (1981), 87 Ill. 2d 190; *Connelly v. Uniroyal, Inc.* (1979), 75 Ill. 2d 393.) We have been unable to fashion a precise test or talismanic phrase to guide us in this task. (See Waits, *Values, Intuitions and Opinion Writing: The Judicial Process and State Court Jurisdiction*, 1983 U. Ill. L. Rev. 917.) Justice Cardozo defined the term "doing business" for jurisdictional purposes as the corporation operating within the State "not occasionally or casually, but with a fair measure of permanence and continuity." *Tauza v. Susquehanna Coal Co.* (1917), 220 N.Y. 259, 267, 115 N.E. 915, 917.

Early decisions of this court required that a corporation have agents or physical offices in this State, and that these agents do more than mere solicitation of business. (*Booz v. Texas & Pacific R.R. Co.* (1911), 250 Ill. 376; see also Eaton, *Illinois Replaces "Profit" for "Presence" in Determining Long-Arm Jurisdiction Over Foreign Corporations*, 69 Ill B.J. 676, 678 (1981).) Technological change and a more sophisticated national economy mandated a departure from the restrictive rule in *Booz*, and this step was taken in *Braband v. Beech Aircraft Corp.* (1978), 72 Ill. 2d 548. In *Braband*, plaintiffs' decedents were killed while aboard an aircraft that crashed in Frobisher Bay, Northwest Territories, Canada. Beech Aircraft Corporation was a Delaware corporation with its principal place of business in Kansas. The defective airplane had been manufactured in Kansas, but Beech had an agreement with Hartzog Aviation, Inc., an Illinois corporation, to market Beech's products within Illinois. This court held that Beech was "doing business" in Illinois even though the activities of Hartzog Aviation were not related to the

subject matter of the litigation. The *Braband* court declined to decide the question of whether Hartzog's activities alone would subject Beech to the jurisdiction of Illinois courts but based the decision on the business activities of Beech. The court noted:

> "In view of defendant's activities within Illinois designed to effect sales to residents of Illinois, defendant could reasonably assume that airplanes which it manufactured would be owned by residents of Illinois and in view of the high degree of mobility peculiar to its products could further assume that they would be flown both within Illinois and into other States, or as in this instance, to other countries. We hold, therefore, that * * * defendant's activities showed sufficient contacts with this State so that requiring it to defend this action does not offend 'traditional notions of fair play and substantial justice.' " 72 Ill. 2d 548, 559.

In the case at bar, we believe that Ltd. had sufficient contacts with Illinois to invoke the jurisdiction of Illinois courts. The record demonstrates that Inc. was a wholly owned subsidiary of Ltd., and that Inc. operated in Rosemont, Illinois, as a supply depot for Ltd. products for the entire United States. Clearly Ltd., through Inc., was doing business in Illinois.

Defendant urges us to follow the decision in *People ex rel. Compagnie Nationale Air France v. Giliberto* (1978), 74 Ill. 2d 90, where this court held that the circuit court of Cook County could not entertain an action arising out of the events surrounding the Israeli rescue of a terrorist-held plane at Entebbe Airport in Uganda. We find *Air France* distinguishable because it involved a determination of lack of jurisdiction over Air France because of the Warsaw Convention governing international air transportation (74 Ill. 2d 90, 108) and a related determination that

forum non conveniens principles precluded the exercise of jurisdiction over Singapore Airlines (74 Ill. 2d 90, 108-16). *Air France* did not squarely involve the "doing business" test for jurisdiction over a nonresident corporation. The case at bar is not comparable.

Defendant argues that *Cannon Manufacturing Co. v. Cudahy Packing Co.* (1925), 267 U.S. 333, 69 L. Ed. 634, 45 S. Ct. 250, warrants a reversal of the appellate court's holding. In *Cannon*, the United States Supreme Court held that the activities of a subsidiary corporation did not automatically subject the parent corporation to the jurisdiction of the State court where the subsidiary was domiciled. Although *Cannon* has not been expressly overruled, its vitality has been limited by the subsequent decisions in *International Shoe* and its progeny. (See Comment, *A New Footnote in Erie v. Tompkins: "Cannon is Overruled,"* 36 N.C. L. Rev. 181 (1958); see generally Wellborn, *Subsidiary Corporations in New York: When Mere Ownership is Enough to Establish Jurisdiction Over the Parent*, 22 Buffalo L. Rev. 681 (1973).) Many commentators have noted that the *Cannon* opinion is no longer followed in an era when the United States Supreme Court focuses on "contacts" rather than "physical presence" in determining the scope of State court jurisdiction over nonresident defendants. (See Kurland, *The Supreme Court, the Due Process Clause, and the In Personam Jurisdiction of State Courts From Pennoyer to Denckla: A Review*, 25 U. Chi. L. Rev. 569 (1958); see generally Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 S. Ct. Rev. 77.) Even an expansive reading of *Cannon* does not justify the conclusion that a parent corporation can never be subject to the jurisdiction of a State where a subsidiary is located. We conclude that *Cannon* does not prevent the State of Illinois from exercising jurisdiction over Ltd.

Ltd.'s contention that service of process on Inc. was not effective is without merit. We believe that Inc. was an agent of Ltd. for service of process, and that Ltd. was fully apprised of the pendency of the suit by the delivery of a copy of the complaints and summons at Inc.'s office in Rosemont. *Davis v. Dresback* (1876), 81 Ill. 393.

We next consider Ltd.'s argument that Illinois cannot exercise jurisdiction over Ltd. because none of the plaintiffs had any contact with Illinois. We believe the crucial question is whether due process prevents the plaintiffs from suing Ltd. in Illinois, not whether any of the plaintiffs are domiciled here. The nature of air-crash litigation frequently produces an exotic cast of characters, and there is often no ideal place to try the case. (See Simpson, *Recent Trends in International Aviation Accident Litigation—A Practical View*, 5 Annals Air & Space Law 189 (1980); 2 J. Kennelly, Litigation and Trial of Air Crash Cases ch. 4.) Ltd.'s argument that the case should be tried in Zambia or Canada is misdirected. This appeal is based on the question of jurisdiction, nor *forum non conveniens*. Although many of the occurrence witnesses reside in Africa, and although it may be more convenient for Ltd. to defend this lawsuit in Canada because its main offices are located there, that cannot affect our determination of the extent of jurisdiction of Illinois courts. If Ltd. cannot be sued in Illinois, it follows that Ltd. cannot be sued anywhere in the United States under the theory of "doing business," since Inc. is the only subsidiary of Ltd. in the United States. We believe that a corporation that has established a supply depot in Illinois to support an enterprise that has sold 885 airplanes in the United States and logged millions of passenger miles should be subject to the jurisdiction of Illinois courts.

Since we have determined that Inc. was doing business in Illinois, we need not address the alternative theory of whether Inc. was the *alter ego* of Ltd. We therefore conclude that Ltd. was doing business in Illinois and that Illinois courts have jurisdiction over this cause of action. The judgment of the appellate court is affirmed, and the cause is remanded to the circuit court for proceedings consistent with the views expressed in this opinion.

Affirmed and remanded.

JUSTICE SIMON, specially concurring:

I concur in the court's conclusion that Illinois has jurisdiction over this case, but not for the reason given, namely that the Canadian corporation is doing business in Illinois merely because it has a subsidiary corporation here. Rather, I would hold that Inc. is an *alter ego* of Ltd.

The record shows that Inc. exists for the sole purpose of selling Ltd.'s products within the United States, that Ltd. provides Inc. with inventory for which Inc. is permitted to pay out of receipts on the sales of that inventory, and that Ltd. owns all of Inc.'s stock. Inc. is overseen, not by a board of directors of its own, but by Ltd.'s board of directors, all Canadians, and two of whose members also serve as president and vice-president of both Ltd. and Inc. In addition, the position of "resident director and manager" of Inc. ranks on Inc.'s official organizational chart with its "service manager" and "spare parts manager" and two levels below its executive officers, both of whom are directors and officers of Ltd. The officers of Inc. are paid by Ltd., as are expenses for business trips on behalf of Inc. Finally, in addition to the substantial name identity between "De Havilland Aircraft of

Canada, Ltd." and "De Havilland Canada, Inc.," Inc. is described in Ltd's Illustrated Parts Catalogue as one of three "De Havilland Canada Products Support Depot[s]."

In short, Inc. exhibits few of the independent characteristics of a subsidiary company but behaves functionally as a branch of Ltd. and holds itself out to the public to be so. Under these circumstances Inc. is properly viewed as an instrumentality or *alter ego* of Ltd., and Illinois has general jurisdiction over Ltd. based on Inc.'s activities here. See *Leach Co. v. General Sani-Can Manufacturing Corp.* (7th Cir. 1968), 393 F.2d 183; *Boryk v. deHavilland Aircraft Co.* (2d Cir. 1965), 341 F.2d 666; *Top Form Mills, Inc. v. Sociedad Nationale Industria Applicazioni Viscosa* (S.D.N.Y. 1977), 428 F. Supp. 1237; *Captain International Industries, Inc. v. The Westbury, Chicago, Inc.* (N.D. Ill. 1975), 416 F. Supp. 721; *Tokyo Boeki (U.S.A.), Inc. v. SS Navarino* (S.D.N.Y. 1971), 324 F. Supp. 361.

Decision of Illinois Appellate Court,
Rendered on February 16, 1983

CRISPIN MAUNDER, *Plaintiff-Appellant, v.* DEHAVILLAND AIRCRAFT OF CANADA, LTD., *Defendant-Appellee.*—(Samuel J. Betar, Public Adm'r of Cook County, Adm'r of the Estate of Raghubir Dutt Law, Deceased, *Plaintiff-Appellant, v.* DeHavilland Aircraft of Canada, Ltd., *Defendant-Appellee.*)

First District (3d Division) Nos. 81-1527, 81-1528 cons.

Reversed and remanded.

PRESIDING JUSTICE MCNAMARA delivered the opinion of the court:

These consolidated actions for personal injury and wrongful death arose from the crash of an airplane manufactured by defendant DeHavilland Aircraft of Canada, Ltd., a Canadian corporation. The trial court granted defendant's motion to quash service of summons and dismissed both causes for lack of jurisdiction. Plaintiffs appeal.

An airplane manufactured by defendant crashed on May 3, 1976, in Zambia, Central Africa. As a result of the crash, plaintiff Crispin Maunder, a passenger and English subject, was injured. Another passenger, Raghubir Dutt Law, a citizen of India, was killed. Maunder and Samuel J. Betar, an Illinois citizen and administrator of Law's estate, filed separate suits in the circuit court of Cook County against defendant for personal injuries and wrongful death. Plaintiffs also named as a defendant DeHavilland Canada, Inc. (DeHavilland, Inc.), a Delaware

corporation with its principal place of business in Rosemont, Illinois. DeHavilland, Inc., is a wholly owned subsidiary of defendant and sells and distributes parts for airplanes manufactured by defendant. Service of the complaint and summons for both actions was affected upon defendant and DeHavilland, Inc., by leaving service on an employee of DeHavilland, Inc.. at its Illinois office.

Pursuant to petitions filed by defendant, the cases were removed to the United States District Court for the Northern District of Illinois. While the matters were pending in that court, DeHavilland, Inc., was dismissed as a party defendant. The district court granted Maunder's motion to remand his action to the circuit court of Cook County on the ground that the Federal Court was without jurisdiction, the suit being between aliens. A similar motion filed by Betar was denied on the ground that diversity did exist between Betar, as administrator, and defendant. The court subsequently found that defendant was not doing business in Illinois and granted defendant's motion to dismiss.

On appeal, the Seventh Circuit Court of Appeals reversed the district court's denial of Betar's motion to remand, holding that Betar was merely a nominal plaintiff and that therefore, like Maunder, the suit was between aliens. (*Betar v DeHavilland Aircraft of Canada, Ltd.* (7th Cir. 1979), 603 F.2d 30, *cert. denied* (1980), 444 U.S. 1098, 62 L. Ed. 2d 785, 100 S. Ct. 1064.) The district court was instructed to remand the case to the circuit court of Cook County. The issue of personal jurisdiction was not addressed.

Upon remand to the circuit court, defendant renewed its motions to quash service of summons and to dismiss both actions for lack of personal jurisdiction. Specifically,

defendant alleged that it was not subject to service of process under the long-arm statute (Ill. Rev. Stat. 1979, ch. 110, par. 17), and that DeHavilland, Inc., was not its agent for service of process in Illinois. After the cases were consolidated and discovery was pursued with respect to the jurisdictional issue, the trial court granted defendant's motion to dismiss.

On appeal, plaintiffs do not base their jurisdictional argument on the long-arm statute. They do not maintain that the airplane involved in the crash was ever in Illinois or that any of its parts had been handled, sold or otherwise connected with defendant's Illinois subsidiary. Rather, plaintiffs urge that defendant's activities within Illinois are sufficient to constitute "doing business" here thus subjecting it to the personal jurisdiction of the Illinois courts. Alternatively, plaintiffs argue that DeHavilland, Inc., is merely an alter ego of defendant and that defendant has therefore submitted to personal jurisdiction in Illinois through DeHavilland, Inc.'s, systematic and continuous activities within this State. We initially address the claim that defendant's activities in Illinois are sufficient to constitute "doing business."

In Illinois, jurisdiction may be acquired over a nonresident for a cause of action unrelated to the corporation's activities in this State so long as the corporation is doing business in Illinois. (*Braband v. Beech Aircraft Corp.*, (1978), 72 Ill. 2d 548, 382 N.E.2d 252, *cert. denied* (1979), 442 U.S. 928, 61 L. Ed. 2d 296, 99 S. Ct. 2857.) There is no all-inclusive test for determining whether a foreign corporation is doing business in this State. (*Cook Associates, Inc. v. Lexington United Corp.* (1981), 87 Ill. 2d 190, 429 N.E.2d 847.) Such finding, however, generally requires that the corporation conducts business in Illinois of such a character and extent as to warrant the in-

ference that it has subjected itself to the jurisdiction and laws of Illinois. (*Cook Associates, Inc. v. Lexington United Corp.*) More than mere solicitation generally is required. (*St. Louis-San Francisco Ry. Co. v. Gitchoff* (1977), 68 Ill. 2d 38, 369 N.E.2d 52.) Nevertheless, jurisdiction has been found based on a variety of other activities. In *Gitchoff* a foreign railroad with no Illinois tracking was held to be amenable to Illinois jurisdiction because it maintained an office in Illinois staffed with employees who solicited business and one employee who spent 60% to 80% of his working time in Illinois coordinating the movements of defendant's railcars. In *Connelly v. Uniroyal, Inc.* (1979), 75 Ill. 2d 393, 389 N.E.2d 155, *appeal dismissed* (1980), 444 U.S. 1060, 62 L. Ed. 2d 738, 100 S. Ct. 992, a product liability action, a foreign corporation was found to be doing business in Illinois because its products regularly entered Illinois in substantial amounts. In *Braband v. Beech Aircraft Corp.*, which is factually similar to the present case, defendant manufacturer was held to be present and doing business in Illinois because it maintained a contractual relationship with an Illinois distributor who, subject to defendant's inspection, was authorized to sell and required to service defendant's products. Defendant also cosponsored an Illinois sales program and advertised its products in Illinois.

Unlike *Beech Aircraft*, there is no contractual relationship between defendant here and DeHavilland, Inc., nor is DeHavilland, Inc., required to service defendant's products. In other respects, however, the justification for jurisdiction in the present case appears to be as strong or even stronger than that in *Beech Aircraft*.

Similar to the distributor in *Beech Aircraft*, DeHavilland, Inc.'s, sole business is to sell and distribute parts for defendant's airplanes. DeHavilland, Inc., is in

fact defendant's only distributor in the United States. Defendant prints and distributes an "Illustrated Parts Catalog" which provides that all orders for parts in the United States should be directed to DeHavilland, Inc. All orders for parts received by defendant from its customers in the United States are likewise referred to DeHavilland, Inc. For the first six years of its existence DeHavilland, Inc., merely ordered parts from defendant as it received orders from defendant's customers. It then paid defendant from proceeds of the sale. In 1974 DeHavilland, Inc., expanded its inventory and began to pay defendant within 30 days of shipment. Some standard parts are purchased by DeHavilland, Inc., directly from suppliers in the United States. DeHavilland, Inc., also has some discretion as to pricing.

The control exercised by defendant over DeHavilland, Inc., appears to be greater than that exercised by the defendant in *Beech Aircraft* over its Illinois distributor. Defendant owns 100% of DeHavilland, Inc.'s, stock. James B. Cox, manager and sole director of DeHavilland, Inc., was previously a service representative for defendant. He is directly responsible to Russell Bannock, president of DeHavilland, Inc., and of defendant. All the officers, with one exception, serve both corporations. They are likewise responsible to Bannock, not Cox. Stanley Kerr, DeHavilland's secretary-treasurer, made occasional trips to Chicago to discuss financing for potential customers with local banks. Expenses for these trips were paid by defendant. Defendant and DeHavilland, Inc., used a combined financial statement.

Defendant in the present case, as in *Beech Aircraft*, entered the Illinois market by way of its distributor, which was also its wholly owned subsidiary. Defendant regularly and systematically reaped substantial profits

through the sale of its parts by its Illinois subsidiary. The fact that these sales were conducted indirectly through a third party does not excuse defendant from the jurisdiction of Illinois courts. (*Connelly v. Uniroyal, Inc.*) In light of the control exercised by defendant over DeHavilland, Inc., coupled with its own activities directed at promoting the sale of its product in Illinois, we hold that defendant is actively and systematically doing business in Illinois and is therefore subject to the jurisdiction of Illinois courts.

Defendant relies on *Cannon Manufacturing Co. v. Cudahy Packing Co.* (1925), 267 U.S. 333, 63 L. Ed. 634, 45 S. Ct. 250, primarily to dispute plaintiff's alter ego theory. Nevertheless, to the extent that defendant relies on *Cannon* for its argument that defendant is not doing business in Illinois we believe that such reliance is misplaced. As noted in *Beech Aircraft*, *Cannon* was decided more than 20 years prior to *International Shoe Co. v. Washington* (1945), 326 U.S. 310, 90 L. Ed. 95, 66 S. Ct. 154, the decision in which the focus of the court on jurisdictional questions shifted from a defendant's "presence" in the forum State to his "minimum contacts" therewith. Consequently, *Cannon* merely purports to hold that conducting business through a wholly owned subsidiary does not necessarily render the parent corporation amenable to process in the State where the subsidiary does business. *Braband v. Beech Aircraft Corp.*

Having determined that defendant is doing business in Illinois, we next turn to the question of whether subjecting it to Illinois jurisdiction violated due process. Under the due process clause of the fourteenth amendment there are limits to which a State is confined in asserting *in personam* jurisdiction over a nonresident corporate defendant. First, it must appear that defendant had such

"minimum contacts" with the State as to render it consistent with "traditional notions of fair play and substantial justice" that it be compelled to defend itself there. (*International Shoe Co. v. Washington* (1945), 326 U.S. 310, 90 L. Ed. 95, 66 S. Ct. 154.) Second, assuming the requisite minimum contacts, a method of service must be employed which is reasonably designed to give defendant actual notice of the action pending against it. *Milliken v. Meyer* (1940), 311 U.S. 457, 85 L. Ed. 278, 61 S. Ct. 339.

In determining whether it is reasonable to require defendant to defend this suit in Illinois, we must focus on the quality and nature of defendant's activities here. (*International Shoe Co. v. Washington.*) In view of defendant's activities directed at promoting the sale of its products in Illinois and the profits which defendant regularly reaped as a result of such activities, we find that it does not offend traditional notions of fair play and substantial justice to require defendant to defend this action in Illinois.

Having found that jurisdiction over defendant in Illinois is both in accord with Illinois law and within the confines of due process, we next address the question of whether defendant was properly served. Since defendant was not personally served in Canada and since the cause of action is unrelated to defendant's activities in Illinois, proper service could have been effected by serving an officer or agent of defendant found within the State. Ill. Rev. Stat. 1977, ch. 110, par. 13.3.

Plaintiffs attempted to serve defendant by leaving copies of the complaints and summons with an employee of DeHavilland, Inc., at its Illinois office. In its motion to dismiss, defendant contended that this method of service was improper because DeHavilland, Inc., was not an agent of defendant for purposes of service of process pursuant

to section 13.3. We do not agree. In *Beech Aircraft*, as in the present case, service on the foreign defendant was accomplished through service on its Illinois distributor. Having found that *Beech* was doing business in Illinois through its Illinois distributor, the court also found the distributor to be the agent of *Beech* and thus a proper recipient of service of process upon *Beech*. (*Braband v. Beech Aircraft Corp.* (1977), 51 Ill. App. 3d 296, 367 N.E.2d 118.) Likewise in the present case we find that DeHavilland, Inc., was an agent of defendant for purposes of service of process.

Defendants also argue, relying on *Mason v. Freeman National Printing Equipment Co.* (1977), 51 Ill. App. 3d 581, 366 N.E.2d 1015, that even if DeHavilland, Inc., was an agent of defendant, the requirements of section 13.3 were not satisfied because a mere employee of the agent was served. We note that this issue was not raised by defendant in its motions to dismiss. We also find that *Mason* is distinguishable. In that case neither defendant nor his agent were actually given notice of the complaint prior to the *ex parte* judgment that was entered. In the present case there is no question that defendant received actual notice. It is obvious, therefore, that plaintiffs' method of service at least met the requirements of due process.

In view of our holding, we need not address plaintiffs' contention that DeHavilland, Inc., is merely an alter ego of defendant and that defendant has therefore submitted to jurisdiction in Illinois.

For the foregoing reasons, the judgment of the circuit court of Cook County dismissing plaintiffs' causes of action are reversed and the causes are remanded for further proceedings.

Reversed and remanded.

McGILLICUDDY and WHITE, JJ., concur.

**Decision of Illinois Circuit Court,
Rendered on May 20, 1981**

IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—LAW DIVISION

BETAR	)	
-vs.-	)	No. 77 L 8087
DEHAVILLAND	)	
and	)	
MAUNDER	)	
-vs.-	)	No. 77 L 5215
DEHAVILLAND	)	

ORDER

This cause coming on to be heard upon the special and limited appearance and motion to quash and dismiss presented by DeHavilland Aircraft of Canada, Ltd., the court being fully advised in the premises;

This court finds that the case of *Cannon v. Cudahy*, 267 U.S. 333 did not involve a constitutional question and is not solely dispositive of the issues in this case. *Cannon* does, however, reflect traditional notions of fair play and substantial justice.

The court further finds that the standards applicable to this case are contained in *Worldwide Volkswagen v. Woodson*, 444 U.S. 286, *Braband v. Beech Aircraft*, 72

Ill.2d 548, *U.A.L. Conductron*, 69 Ill.App.3d 847 at page 852, and in addition *Cook Associated v. Lexington United*, 86 Ill.App.3d 909.

Worldwide reiterates the Constitutional standards in terms of "minimum contacts." The concept, according to the Supreme Court, performs two related functions: 1) protection of the defendants against the burdens of litigating on a distant or inconvenient forum, and 2) ensurers against individual states over-reaching under the federal system.

With respect to 1) above, the court stated: "The protection against inconvenient litigation is typically described in terms of 'reasonableness' or 'fairness'. We have said that the defendant's contacts with the forum state must be such that maintenance of the suit 'does not offend traditional notions of fair play and substantial justice'. (Citations omitted.) The relationship between the defendant and the forum must be such that it is reasonable to require the corporation to defend *the particular suit which is brought there*" (emphasis supplied). Among other factors to be considered is the forum state's interest in adjudicating the dispute.

In *Braband* the Illinois Supreme Court specifically did not decide that the activities of the distributor-agent were sufficient minimum contacts to establish jurisdiction in Illinois. Rather the court found that Beech itself, conducted sufficient activities in Illinois to meet the minimum contacts test. It is important to note that the court in *Braband* did not merely find minimum contacts, but went further, as required by *International Shoe* and *Shafer* and analyzed "the quality and nature of the activities in which the defendant was engaged and whether it is reasonable to require defendant to defend the particular suit which is brought here." In this analysis the court first noted

that the suit was brought on behalf of Illinois residents for death occurring on a flight originating in Illinois—"clearly within the ambit of the states [sic.] legitimate protective policy." Secondly, the court analyzed the contacts in light of the nature of the litigation, concluding its analysis as follows:

"In review of defendant's activities within Illinois designed to effect sales to residents of Illinois, defendant could reasonably assume that airplanes which it manufactured would be owned by residents of Illinois and in view of the high degree of mobility peculiar to its products could further assume that they would be flown both within Illinois and into other states, or as in this instance, to other countries. *Conductron* at page 852 further reiterates this analysis and notes that it is not merely the contracts [sic.] but the nature of the contacts which must be analyzed to determine whether it is fair to require a defendant to defend in Illinois.

The instant litigation involves the crash in Africa of a plane manufactured in Canada causing the death of two residents of India. It cannot be said that these facts are clearly "within the ambit of the states [sic.] legitimate protective policy". The contacts with this state involve a separate subsidiary corporation which supplies parts for DeHavilland aircrafts, however, no activities of this subsidiary are in any way involved in the basic litigation. There is no contention that the subsidiary supplied parts for the plane involved in the crash. There is some evidence that the parent exercised some control of the subsidiary both in starting up the business and with respect to the line of authority, however, the evidence does not show that the subsidiary was a mere sham or alter ego. Further, the subsidiary did not manufacture or sell aircraft.

Analyzing the nature and quality of the contacts with the State of Illinois, this court cannot say that it would be fair and reasonable to require DeHavilland Aircraft, Ltd., a Canadian Corp., to defend this action in Illinois.

Additionally, reference is made to *Cook Associates v. Lexington, supra*, wherein the Illinois Appellate Court adopts a broader method of analysis requiring a determination of the relationship among the forum, the defendant and the litigation. Under this analysis, there is an insufficient relationship among the defendant, the forum and the litigation to show that DeHavilland, Ltd. could have reasonably anticipated being haled [sic.] into court in Illinois to defend this action.

For the reasons stated, the defendant's motion to quash service and dismiss the action is granted.

JUDGE ARTHUR A. SULLIVAN, JR.
ENTER: MAY 20, 1981
CIRCUIT COURT